



Judiciary Committee Testimony

By Stan Sorkin, President

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Testimony in Support of SB No. 258: An Act Concerning Bad Faith Claims or Assertions of Patent Infringement

Good afternoon, Chairman Coleman, Chairman Fox and Members of the Judiciary. My name is Stan Sorkin, President of the Connecticut Food Association. I am testifying on behalf of the members of the Connecticut Food Association in support to SB No. 258.

The Connecticut Food Association is the state trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 240 member companies—food retailers, wholesalers, distributors, and service providers in the state of Connecticut. CFA's members in Connecticut operate approximately 300 retail food stores and 200 pharmacies. CFA's retail membership is composed of multi-store chains, regional firms, and single store independent supermarkets employing over 30,000 associates. The majority of CFA members are family-owned supermarkets. Our work force is composed of union and non-union employees with 70% of our employees part-time. Many of these part-time employees are students 18 years of age and under. Our goal is to create a growth oriented economic climate that makes Connecticut competitive with surrounding states.

As small business owners, operators of supermarkets, pharmacies and other food markets expect to encounter business challenges, from fluctuations in cost of grocery goods to higher tax rates. But in recent years, these purveyors – upon whom most Americans depend for their daily meals – have encountered an unexpected challenge: defending themselves against patent infringement suits.

As these unwarranted suits have grown in frequency throughout the food retail industry – and in others, from hotels to banks to tech startups – the financial cost associated with them has skyrocketed. Without Congressional action soon, retailers may be forced to reduce the number of employees, cut services, and even shut their doors. This leads to loss of jobs as well as an inability to meet consumer demand.

But why are food retailers being targeted with patent infringement suits in the first place? Because as they have adopted consumer-friendly technologies – like the use of convenient swipe cards, store locators on their websites, or QR codes for coupons or product information – they have inadvertently fallen into the scope of patent trolls.

Patent trolls are predatory entities that acquire patents (often of questionable validity), but rather than using that intellectual property to manufacture and sell new goods, they hunt for companies that could be accused of infringing. Then, they demand costly settlements, or even file lawsuits, pocketing their profits.

From wifi in coffee shops to office scanners, even obvious technologies are being used as a tool for trolls to fatten their coffers. And, it is worth noting, this does not lead to innovation or to new technologies; rather, it is used to stifle the ability of businesses to become more innovative or consumer-friendly in their own services.

After all, many of the companies targeted by patent trolls in recent years can't afford to take on the costs associated with defending themselves in court, regardless of the lack of merit behind these infringement charges; their defense could cost hundreds of thousands of dollars, if not millions. Thus, they often have to settle for a "licensing fee" – which, while usually less than the cost of litigation, can still tally into the tens or hundreds of thousands of dollars.

In the food retail industry, any such "fees" can be enough to push a food market or pharmacy from profitable to out-of-business. As is, a supermarket typically makes only a 1.0% to 1.5% bottom line profit. This simply does not allow an owner the luxury of taking on questionable licensing fees as a business expense.

These costs also divert resources that could be used in a positive way, from job creation to business expansion to the introduction of new services for consumers.

This patent trolling behavior is lucrative, with some estimates pegging the national cost of patent trolls at \$29 billion per year. However, it is absolutely not market-friendly or pro-competitive.

We believe that this bill which would provide judicial relief to persons who are the targets of bad faith claims or assertions of patent infringement is a step in the right direction to eliminate the abuses of patent trolling.

We urge you to vote Yes on SB 258.